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OFFICE OF PETITIONS

In re Patent No. 7,631,327
Issued: December 8, 2009
Application No. 09/924,669
Filed: August 8, 2001
Attorney Docket No: 10022/142

: DECISION ON REQUEST
: FOR RECONSIDERATION
: OF PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. § 1.705(d) filed on December 18, 2009, requesting that the patent term adjustment indicated on the above-identified patent be corrected from 865 days to 1535 days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand two hundred seventy-four (1274) days is **GRANTED to the extent indicated herein.**

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on August 9, 2004 and ends on August 12, 2007, the day before the RCE was filed, and the B delay considering the 369 days of overlap is 1099 (not 1100) days.

See 35 U.S.C. 154(b)(1)(B)(i). Non-overlapping B delay is 730 days. Further, patentee fails to account for the filing of a Notice of Appeal on November 10, 2008. The 260 days of the over three year period consumed by appellate review, beginning on November 10, 2008 and ending on July 28, 2009, the date the Notice of Allowance was mailed, are not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii). As such, the patent term adjustment is 1274 (1039 + 8 + 41 "A delay days" + 1099 "B delay days" - 369 days overlap - 260 days excluded - 284 applicant delay days, not 1535 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or

patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand two hundred seventy-four (1274) days**.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

A handwritten signature in black ink, appearing to read 'Anthony Knight', is positioned above the printed name and title.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT
UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,631,327 B2

DATED : December 8, 2009

INVENTOR(S) : Kelly L. Dempski

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (865) days

Delete the phrase "by 865 days" and insert – by 1274 days--